

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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**EDDIE GARCIA,**

**Plaintiff,**

**v.**

**Civil Action No.  
9:00-cv-1403 (GLS/GHL)**

**SERGEANT WEBBER, Marcy Correctional  
Facility; CORRECTION OFFICER MCDOWELL,  
Marcy Correctional Facility; JOSEPH JACKSON,  
Inmate, Marcy Correctional Facility; and JOHN  
DOES #1-7, Correctional Officers at Marcy  
Correctional Facility,**

**Defendants.**

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**APPEARANCES:**

**FOR THE PLAINTIFF:**

**EDDIE GARCIA**

*Pro Se*

**93-A-4498**

**Clinton Correctional Facility Annex**

**P.O. Box 2000**

**Dannemora, NY 12929**

**FOR THE DEFENDANTS:**

**Defendant Webber**

**HON. ELIOT L. SPITZER**

**Attorney General for the  
State of New York**

**207 Genesee Street**

**Utica, NY 13501**

**JOEL L. MARMELSTEIN, ESQ.  
Assistant Attorney General**

**CO McDowell**

**Joseph Jackson**

**No appearance**

**Gary L. Sharpe,**

**U.S. District Judge**

**ORDER**

The above-captioned matter comes to this court following a Report-Recommendation by Magistrate Judge George H. Lowe duly filed July 14, 2005. Following ten days from the service thereof, the Clerk has sent the file, for review and adoption by the court.

After careful review of all of the papers, including the Magistrate Judge's Report-Recommendation, and there being no objections, the Report-Recommendation of Magistrate Judge George H. Lowe filed July 14, 2005 is **ACCEPTED** in its entirety for the reasons stated therein.

**WHEREFORE**, for the foregoing reasons, it is hereby

**ORDERED** that Defendant Webber's motion is **GRANTED**; and it is further

**ORDERED** that the complaint against all Defendants is conditionally dismissed, with leave to replead, **within THIRTY days of this order**, if the following **conditions** are satisfied;

(1) Plaintiff's amended complaint must sufficiently allege facts indicating that:

(a) there was no working grievance program at Marcy Correctional Facility during the occurrence of the events alleged;

or

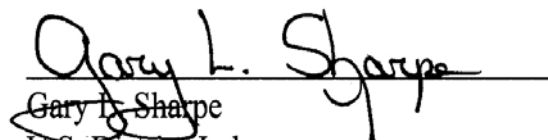
(b) defendants inhibited Plaintiff from exhausting his administrative remedies so as to estop the defendants from raising this defense; or

(c) special circumstances exist justifying Plaintiff's failure to comply with the administrative procedure requirements; and it is further

**ORDERED** that Plaintiff's failure to file an amended complaint which satisfies the above requirements **SHALL** result in dismissal of this case without further order of this Court.

**IT IS SO ORDERED.**

Dated: August 23, 2005  
Albany, New York

  
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Gary L. Sharpe  
U.S. District Judge